IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1035(S/S) of 2006

Prem Prasad,
S/o Har Ram, Driver,
G.B. Pant, Hospital,
Nainital. **……Petitioner**

Versus

1. State of Uttaranchal through Director, Medical Health, Dehradun.
2. Chief Medical Officer, Nainital.
3. Medical Superintendent, G.B. Pant Hospital, Nainital.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Dinesh Gahatori, learned counsel for the petitioner and Sri Paresh Tripathi, learned counsel for State of Uttaranchal on behalf of respondents.

By means of this writ petition, petitioner has filed the present writ petition for the following reliefs:

(a) issue a writ, order or direction in the nature of Certiorari quashing the order dated 30.6.2006 (Annexure No. 5) passed by respondent no. 3 directing the petitioner to retire on 31.07.2006;

(b) issue a writ, order or direction in the nature of Mandamus directing the respondents to correct the date of birth mentioned in the service book as per the School Leaving Certificate submitted before the respondents at the time of appointment.

(c) any order, rule or direction, which this Hon'ble Court may deem fit and proper in the present circumstances or the case.

(d) award the costs to the petitioner.

The submission of learned counsel for the petitioner is that petitioner was appointed as Driver with the respondent – department on 11.12.1974 and the actual date of birth of the petitioner is 01.10.1948, however, in the service book it is mentioned as 01.07.1946. According to actual date of birth petitioner shall retire from the services in the month of October, 2008. Respondent no. 3 has issued notice dated 30.06.2006, (annexure no. 5 to the writ petition) by which petitioner was informed that he shall retire from service on 31.07.2006.

It is a well settled law that the date of birth entered in the service book shall be treated as final, until and unless it is contradictory to the date of birth mentioned in the High School Certificate.

The submission of the petitioner is that petitioner is only Class V passed and according to him, he has already submitted the school leaving certificate of Class V before the Competent Authority.

It is well settled law that an employee can apply for correction of the date of birth mentioned in the service book at the earliest and not at the fag end of the retirement. Today, the petitioner is going to be retired and on the last date he is filing the writ petition. No direction can be issued without hearing other parties' even if there is some substance in the submission of the petitioner. In any case, petitioner has already moved a

representation before Director General, Medical Health and Family Welfare, Dehradun on 20.03.2006 (Annexure no. 3 to the writ petition). The submission of the petitioner is that respondents have yet not taken any decision on the representation of the petitioner till date.

Without going into the merit of the case, I direct the respondent no. 2 to take decision on the representation of the petitioner dated 20.03.2006 within a period of four weeks for the date of production of certified copy of this order.

With this direction the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J)

July 31, 2006
SKSharma